BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

VICKKI J. POWERS	)	
Claimant	)	
	)	
VS.	)	
	)	
THE KANSAS CITY STAR COMPANY	)	
Respondent	)	Docket No. 1,060,267
	)	
AND	)	
	)	
PHOENIX INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the January 23, 2013, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh. Kathleen J. Cossairt, of Lenexa, Kansas, appeared for claimant. Frederick J. Greenbaum, of Kansas City, Kansas, appeared for respondent.

The Administrative Law Judge (ALJ) found claimant's bilateral carpal tunnel syndrome arose out of and in the course of her employment and ordered respondent to designate an authorized physician to treat the same.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the January 23, 2013, Preliminary Hearing and the exhibits, and the transcript of the October 24, 2012, Preliminary Hearing and the exhibits, together with the pleadings contained in the administrative file.

ISSUES

Respondent requests review of the ALJ's finding that claimant's injury arose out of and in the course of her employment. Respondent contends the causation opinion of Dr. J. Clinton Walker is more credible than the causation opinion of Dr. Lynn Ketchum.

Claimant argues she has met the burden of proof that her work activities are the prevailing factor causing the right upper extremity problems, which includes scapholunate dissociation, not just the right carpal tunnel syndrome.

The issue for the Board's review is: Did claimant's right carpal tunnel syndrome and right scapholunate dissociation arise out of and in the course of her employment at respondent?

FINDINGS OF FACT

Claimant is claiming a series of injuries to her bilateral upper extremities beginning October 2011 and continuing. She filed an Application for Preliminary Hearing asking for treatment on September 4, 2012. At a preliminary hearing held October 24, 2012, claimant's attorney told the ALJ that claimant was asking for treatment for right carpal tunnel syndrome and scapholunate dissociation.

Claimant has worked for respondent since June 1979. She was a district manager in which she did a lot of field work. She also did the collections from the district's carriers. Claimant was off work from April 2011 to September 6, 2011, because of a personal medical condition. When she returned to work, she was given the position of delivery operations manager. In both the position as district manager and delivery operations manager, claimant was required to roll and throw papers whenever an employee under her supervision did not show up to work. The difference, claimant explained, was that as a district manager, she had 20 to 25 carriers under her supervision; as the delivery operations manager, she had 140 carriers under her supervision. When claimant held the position of district manager, she rolled and threw papers about 50 percent of the time. When she was given the position of delivery operations manager, 80 to 100 percent of her time was spent rolling and throwing papers. At times she would roll 800 papers a day from five to seven days a week.

By October 2011, claimant began noticing symptoms in her hands and arms that she believed was from throwing papers. On November 6, 2011, claimant had rolled about 100 papers when the pain was such she could not do any more. Claimant called her supervisor, Mitch Allgood, and indicated she could not roll or throw the rest of the papers. Claimant testified Mr. Allgood told her he would try to find someone to complete the route and would let her know. Mr. Allgood did not call claimant back, so she called her husband, who assisted her in completing the route. Claimant said Mr. Allgood knew she had been having problems throwing the papers. Respondent did not arrange for claimant to get medical treatment, and claimant continued to perform her work.

On December 5, 2011, claimant was seen by Dr. Danny Carroll, an orthopedic surgeon, at the request of claimant's personal physician. Dr. Carroll had x-rays taken and diagnosed claimant with bilateral carpal tunnel syndrome and advanced degenerative joint

disease (DJD) of the bilateral wrists with scapholunate dissociations. Dr. Carroll did not comment on causation of claimant's conditions.

In December 2011, claimant reported the condition to Monica in respondent's human resources department. She was sent to CorporateCare, where she was seen by Dr. Trent Knewston on December 14, 2011. Dr. Knewston diagnosed claimant with bilateral wrist pain; bilateral carpal tunnel syndrome, right worse than left; and DJD of the bilateral wrists. Dr. Knewston opined that claimant's DJD was not directly related to her work activities but that she had an exacerbation/aggravation of preexisting conditions that was at least temporally related to repetitive rolling and throwing activities at work. Claimant was given work restrictions of no lifting more than 5 pounds and no forced gripping or squeezing with the affected hand. Additionally, she was to rotate job tasks, work and sleep with the wrists in splints, and was not to roll or throw newspapers.

On February 21, 2012, claimant was examined by Dr. J. Clinton Walker at the request of respondent. Dr. Walker diagnosed claimant with bilateral chronic carpal (scaphulunate) instability with scaphulunate advanced collapse arthritic change and bilateral carpal tunnel syndrome. Dr. Walker opined:

> Ms. Powers' primary problem is bilateral wrist arthritis secondary to chronic scapholunate ligament injuries. The progression of this condition over time has contributed to the formation of carpal tunnel syndrome symptoms. Her job related duties are not the prevailing cause of her degenerative wrist arthritis or carpal tunnel syndrome. Scapholunate instability is caused by wrist trauma, such as falling onto an outstretched hand. This mechanism of injury commonly either results in a fracture or a carpal ligament tear. Carpal ligament tears can have relatively mild symptoms initially, but frequently result in slowly progressive wrist arthritic change. As the arthritic change progresses, the wrists will eventually become symptomatic. This change commonly occurs over years to decades. The degenerative changes present in Ms. Powers' wrists are consistent with changes that have taken place over years. These changes did not result from her work duties. Carpal instability and arthritic change predispose patients to carpal tunnel syndrome. The long standing degenerative changes are the prevailing factor for her carpal tunnel syndrome symptoms.[1]

On July 26, 2012, claimant was evaluated by Dr. Lynn Ketchum at the request of claimant's attorney. He was asked to provide a causation opinion of claimant's carpal tunnel syndrome and any other conditions on the right, as well as treatment recommendations. Dr. Ketchum stated that claimant had a positive EMG done December 12, 2011, which was diagnostic of moderate carpal tunnel syndrome on the right and mild carpal tunnel syndrome on the left. He also diagnosed diastasis of the scapholunate joint. He opined:

---

[1] P.H. Trans. (Oct. 24, 2012), Resp. Ex. A at 4-5.

> It is my opinion, within a reasonable degree of medical certainty, that the prevailing factor in causing her injuries, namely right carpal tunnel syndrome and right scapholunate dissociation, was the highly repetitive work that she has done for [respondent] over a 33-year period, which includes folding 800 papers a day, five to seven days a week, including the large Sunday paper . . . . The scapholunate dissociation is not in any way a cause of her carpal tunnel syndrome.[2]

The February 21, 2012, report of Dr. Walker and the July 26, 2012, report of Dr. Ketchum were among the exhibits attached to the preliminary hearing transcript from October 24, 2012. On October 25, 2012, the ALJ entered an Order denying claimant benefits, being more persuaded by Dr. Walker's causation opinion than that of Dr. Ketchum.

Thereafter, Dr. Ketchum provided claimant's attorney with a supplemental medical report dated November 13, 2012, in which he corrected claimant's history by acknowledging that although claimant did heavy work for respondent for 33 years, it was not until September 6, 2011, that she began to perform the significantly intensive work of folding 800 papers a day for five to seven days a week. Dr. Ketchum said the repetitive gripping, lifting, folding, and twisting of claimant's wrists caused an "increased risk or hazard to which her employment exposed her."[3] Dr. Ketchum further stated: "That increased risk or hazard was the prevailing factor in causing both the conditions of carpal tunnel syndrome and scapholunate dissociation."[4] A second preliminary hearing was held January 23, 2013, and Dr. Ketchum's supplemental report was added as an exhibit. The ALJ thereafter found that claimant's wrist and hand conditions are traceable to the job duties since September 2011 and ordered respondent to designate an authorized physician to treat claimant's bilateral carpal tunnel syndrome.

PRINCIPLES OF LAW

K.S.A. 2011 Supp. 44-501b states in part:

> (b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.
>
> (c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the

---

[2] P.H. Trans. (Oct. 24, 2012), Cl. Ex. 1 at 2.

[3] P.H. Trans. (Jan. 23, 2013), Cl. Ex. 1.

[4] *Id.*

claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2011 Supp. 44-508 states in part:

(f)(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

(i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3) (A) The words ''arising out of and in the course of employment'' as used in the workers compensation act shall not be construed to include:

(i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

. . . .

(g) ''Prevailing'' as it relates to the term ''factor'' means the primary factor, in relation to any other factor. In determining what constitutes the ''prevailing factor'' in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

(h) ''Burden of proof'' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[5] Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2011 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.[6]

ANALYSIS

There have been two preliminary orders in this case dealing with the same issues. In the first order, issued on October 25, 2012, the ALJ relied on the opinion of Dr. Walker, a physician hired by respondent, to decide that claimant's job duties were not the prevailing cause of the right carpal tunnel syndrome or associated scapholunate condition. A report from Dr. Ketchum, a physician hired by claimant, was also in the record of the first hearing. Dr. Ketchum opined that the job duties were the prevailing cause of the two conditions.

The ALJ disregarded Dr. Ketchum's opinion because his report contained an inaccurate history of claimant's work duties. The "history of present illness" section of Dr. Walker's report appears to be more consistent with claimant's testimony at the first preliminary hearing. After considering both reports, the ALJ chose to rely on Dr. Walker's opinion.

In the second preliminary hearing order, the ALJ reversed his opinion and ordered medical treatment for claimant. The reversal was based upon a follow-up letter from Dr. Ketchum wherein he revised his understanding of claimant's work history and provided the same prevailing factor opinion he had already given based upon his prior understanding of causation.

It significant to note that Dr. Walker found "advanced scapholunate advanced collapse degenerative changes"[7] in the x-rays. Dr. Walker wrote that claimant's primary problem was bilateral wrist arthritis, secondary to chronic scapholunate ligament injuries, the progression of which contributed to bilateral carpal tunnel syndrome. Dr. Walker stated that the "progression of this condition over time has contributed to the formation of carpal tunnel syndrome symptoms."[8] Confirming a progressive disease process, Dr. Knewston opined that claimant's DJD was only temporally related to her work activities.

---

[5] K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, *rev. denied* 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, *rev. denied* 271 Kan. 1035 (2001).

[6] K.S.A. 2011 Supp. 44-555c(k).

[7] P.H. Trans., (Oct. 24, 2012) Resp. Ex. A at 4.

[8] *Id.*

Dr. Ketchum did not note the presence of arthritis in the x-rays he had taken during the day of his examination. There is no indication in his report that he reviewed the x-rays taken by Dr. Walker. Dr. Ketchum did not record a history of the onset of pain, except to say that claimant had no pain or numbness in her wrists 33 years ago, prior to working for respondent. This Board Member is also concerned with the manner in which Dr. Ketchum changed his causation opinion. He initially wrote that the prevailing cause was the 33 years of repetitive work done by claimant. In his second opinion, he wrote that the prevailing factor was in increased repetitive work done by claimant after September 6, 2011.

The finding of arthritis by Dr. Walker is more consistent with a condition of long standing. When claimant was initially treated at the occupational medicine clinic, she gave a history of pain which started 37 months prior to the December 14, 2011, examination. This too is consistent with a condition of long standing. In her oral testimony, claimant stated that she had a little pain prior to returning after her leave of absence. She used an analogy of a baseball player who would feel some pain and not give it much thought.

CONCLUSION

Based on the foregoing the Board finds that the claimant did not sustain the burden of proving that her work activities are more probably than not the prevailing factor in causing her injuries.

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Kenneth J. Hursh dated January 23, 2013, is reversed.

IT IS SO ORDERED.

Dated this _____ day of March, 2013.

_____
HONORABLE SETH G. VALERIUS
BOARD MEMBER

c: Kathleen J. Cossairt, Attorney for Claimant
Katy@RKLawOffice.com

Frederick J. Greenbaum, Attorney for Respondent and its Insurance Carrier
fgreenbaum@mvplaw.com
mvpkc@mvplaw.com

Kenneth J. Hursh, Administrative Law Judge